

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT CURRY)
)
Plaintiff,)
)
v.) Civil Action No. 07-0828
)
DELTA INTERNATIONAL MACHINERY)
CORPORATION and LOWE'S INC.)
Defendants.)

MEMORANDUM ORDER

Gary L. Lancaster,
District Judge

July 2, 2008

This is a personal injury case. Before the Court is defendants' motion to compel compliance with a non-party subpoena [doc. no. 20]. On May 7, 2008, defendants issued a subpoena duces tecum to Stephen F. Gass, an employee of Sawstop, LLC. The subpoena, and the accompanying notice of oral deposition and deposition duces tecum, were issued from the United States District Court for the District of Oregon. Dr. Gass is located in Oregon. The subpoena directed that the deposition and document production take place in Oregon. Thus, the subpoena was properly issued from the Oregon District Court. Fed. R. Civ. P. 45(a)(2)(B) and (C).

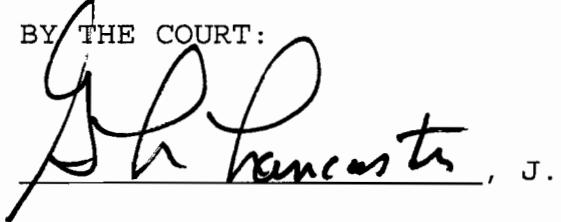
Nevertheless, defendants seek enforcement of that subpoena in this court. Dr. Gass is not a party to this action, and, thus, any motion for an order compelling compliance with the subpoena "must be made in the court where

the discovery is or will be taken." Fed. R. Civ. P. 37(a)(2). It is the court that issued the subpoena that has the power to quash, modify, or compel compliance with the subpoena, or hold a person in contempt for failing to comply with it. Fed. R. Civ. P. 45(c)(2)(B)(i), 45(c)(3)(A), and 45(e).

As such, the defendants must seek relief against Dr. Gass in The United States District Court for the District of Oregon. Dr. Gass's status as an expert in this case is irrelevant under the circumstances. Defendants issued the subpoena to Dr. Gass, in his individual capacity, from the Oregon district court. This court did not issue the subpoena and this court has no power to grant defendants the relief sought in their motion to compel. Accordingly, defendants' motion must be denied.

Therefore, this 2nd day of July, 2008, IT IS HEREBY ORDERED that defendants' motion to compel [doc. no. 20] is DENIED. Defendants' motion for leave to file a reply brief [doc. no. 25] is DENIED. Defendants' motion to strike docket entries 23 and 24 [doc. no. 25] is GRANTED.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John H. Lanham". The signature is fluid and cursive, with "John" and "H." being more stylized, and "Lanham" in a more standard script.

cc: All Counsel of Record